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CALIFORNIA STATE PERSONNEL BOARD MEETING
Ramada Limited Old Town
3900 Old Town Avenue
San Diego, California 92110
(619) 299-7400 - FAX (619) 299-1580

Public Session Location - Old Town Room

Closed Session Location - Old Town Room

FULL BOARD MEETING MINUTES*

DECEMBER 4, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Department of Finance has asked state agencies to further cut their operating expenses for the current fiscal year since the original cuts did not achieve the \$150 million dollar goal.

* The Minutes for Board meetings can be obtained at the following Internet address:
<http://www.spb.ca.gov/servicesrd.cfm>

- B. State Personnel Board staff distributed a memo to departments outlining the impact of the Court of Appeal's decision on the state's affirmative action statues. Pacific Legal Foundation has sent a letter to selected departments requesting information on this implementation of the court's decision.
- C. State Personnel Board and the Department of Personnel Administration staff will meet to discuss issues of concern.
- D. At the January 8-9, 2002, Board meeting, State Personnel Board staff will submit a revised proposal for transfer provisions for positions represented by the California Association of Professional Scientists (CAPS).
- E. The Department of General Services has issued a memo to state departments indicating it has determined that printing services contracts are governed by Article VII of the State Constitution and Government Code section 19130.
- F. The State of Florida will be contracting out personnel payroll transactions, benefit administration and recruitment during the year 2002.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Legal News:

- A. Douglas v. California Department of the Youth Authority (CYA) (2001 DJDAR 12351) - Douglas was denied employment with CYA on the grounds that he failed a color vision test. Ninth Circuit Court of Appeal has ruled that California waived it's sovereign immunity defense to a Rehabilitation Act Section 504 claim by accepting federal Rehabilitation Act funds. With respect to the Americans With Disabilities Act claim, the court remanded to the district court to determine if CYA waived its claim of sovereign immunity by not

asserting it in the court below. The court also found the claims timely under the continuing violation doctrine.

- B. United States Postal Service v. Gregory - 2001 DJDAR 12017 - The United States Supreme Court held that despite the fact that grievances were pending on prior minor disciplinary actions taken against Gregory, the Merit Systems Protection Board could review each of the prior disciplinary actions to determine the reasonableness of a termination.

Litigation:

- A. International Union of Operating Engineers (IUOE) v. State of California (State Personnel Board)(SPB) - SPB will file brief opposing IUOE's appeal from dismissal of complaint issued against SPB this week.
- B. State Personnel Board (SPB) v. The Department of Personnel Administration (DPA)/IUOE/California State Employees Association (CSEA) - Judge signed SPB's proposed judgment adopting tentative ruling as a Statement of Decision and issued a writ and injunction compelling IUOE and DPA to cease and desist and refrain from enforcing the provisions of the Units 11, 12 and 13 MOU's that provide that disciplinary actions may be grieved, appealed to Board of Adjustment, or arbitrated, and from submitting any appeal of an adverse action or rejection during probation to those processes. The court also denied request of IUOE that the court take argument on IUOE's request for a stay of the court's judgment given that IUOE had not filed a motion requesting such a stay.

Other:

- A. Meeting of Ethics Officers - On November 30, 2001, an Ethics Officers meeting was convened for review of the Political Reform Act, the Incompatible Activities law and other laws dealing with ethics in state government. Our legal office is reviewing the State Personnel Board's requirements for disclosures to assure our requirements are consistent with current law.

- B. SPB's Council of Counsels - The meeting of November 27, 2001, was well attended and well received. The agenda included an update on legal division issues and Board decisions as well as an update and discussion on SPB's appeals division pilot projects, proposed regulations on discovery, whistleblower retaliation and mediation, and proposals for additional changes in appeals division procedures. Feedback from group is being evaluated for incorporation into draft regulations and pilot proposals. Next meeting will be scheduled for end of February 2002.
 - C. State Employee Mediation Program (SEMP) - The Capitol Weekly has published 2 favorable lead articles on the program during the month of November.
4. REPORT ON LEGISLATION - Judy Balmain
Presented by Walter Vaughn, Executive Officer
- A. The members of the State Personnel Board oppose the "Post and Bid/Promote" provisions of the Memorandum of Understanding between the Department of Personnel Administration and the California State Employees Association, and authorize State Personnel Board staff to oppose those provisions if submitted for legislative approval.
- VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.
5. ELECTION OF OFFICERS FOR 2002
- ACTION: On December 4, 2001, Ron Alvarado, President, William Elkins, Vice-President and Sean Harrigan, Board's Representative at the Public Employees Retirement System (PERS) were re-elected to their respective positions.
- VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.
6. ORAL ARGUMENT
- Oral argument in the matter of BETTY JOE SMITH, CASE NO. 98-0119. Appeal from dismissal. Department of Developmental Services.

ACTION: Withdrawn

7. HEARING - PSC NO. 01-05: Appeal of the International Union of Operating Engineers from the Executive Officer's June 5, 2001 Approval of Contracts between the California Department of Food and Agriculture's 22nd District Agricultural Association (DAA) and Maintenance Staffing, Inc. and A Plus Personnel, Inc.

Persons Participating:

Sandra Tang, Graduate Legal Assistant, California Department of Food & Agriculture (CDFA)
Jeffrey Boxer, Legal Assistant, Levy, Stern & Ford

ACTION: Submitted

BOARD ACTIONS

8. STATE PERSONNEL BOARD SUMMARY MINUTES OF NOVEMBER 20, 2001

ACTION: Adopted on December 4, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

9. ACTION ON SUBMITTED ITEMS

ACTION: See pages 11-12

10. ADMINISTRATIVE LAW JUDGE CASES

On December 4, 2001, Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter, Harrigan - Aye.

PROPOSED DECISIONS

PATRICK M. BARBER, CASE NO. 00-3940
Appeal From 30 Calendar Days Suspension
Youth Correctional Counselor
Department of the Youth Authority

ACTION: 30 calendar days suspension modified to five workdays suspension

ARTHUR JOHN DAVID ZAMORA, CASE NO. 01-2603

Appeal from Dismissal

Cook I

Department of the Youth Authority

ACTION: Dismissal modified to a three months suspension

LEONARD CARRANZA, CASE NO. 01-2517

Appeal from Dismissal

Motor Vehicle Field Representative

Department of Motor Vehicles

ACTION: Dismissal revoked

OTIS L. MITCHELL, CASE NO. 01-2165

Appeal from rejection during

probationary period

Warehouse Worker

Department of Transportation

ACTION: Rejection during probationary period affirmed

MIKE DORRI, SPB CASE NO. 00-2927

Appeal from rejection during

probationary period

Transportation Engineer (Civil)

Department of Transportation

ACTION: Proposed decision rejected by Board and remanded
to Administrative Law Judge

PETITIONS FOR REHEARING

MARTIN GREENHALGH, CASE NO. 01-1055

Appeal from five-percent reduction

in salary for 12 months

Correctional Officer

North Kern State Prison

Department o Corrections

ACTION: Petition for rehearing filed by appellant
granted

CHRISTINA SALAZAR, CASE NO. 99-5136
Appeal from denial of request for
reasonable accommodation
Disability Insurance Program Representative
Employment Development Department
ACTION: Petition for rehearing filed by respondent
granted and remanded to Administrative Law Judge

11. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 13-16

12. WITHHOLD APPEALS
On December 4, 2001, Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.
VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

STEVEN ALFORD, CASE NO. 01-2894
Classification: Correctional
Department of Corrections
ACTION: DENIED

QUEENESTER ANDERSON, CASE NO. 01-2805
Classification: Youth Correctional Officer
Department of Youth Authority
ACTION: DENIED

ROY BURKETT, CASE NO. 01-2817
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILLARD CLARK, CASE NO. 01-2893
Classification: Youth Correctional Officer
Department of Youth Authority
ACTION: DENIED

TIMOTHY CONLEY, CASE NO. 01-0600
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JEANNIE CROWE, CASE NO. 01-0949

Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SAMANTHA CULLEN, CASE NO. 01-0528 Name
Classification: Youth Correctional Counselor
Department of Youth Authority
ACTION: DENIED

ERNEST ESCALERA, CASE NO. 01-2696
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

PAUL GONZALES, CASE NO. 01-0720
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

REFUGIO GONZALES, CASE NO. 01-0635
Classification: Youth Correctional Officer
Department of Youth Authority
ACTION: DENIED

FERDINAND JERUSALEM, CASE NO. 01-2860
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SANNOH KAMARA, CASE NO. 01-2867
Classification: Correctional Officer
Department of Corrections
ACTION: WITHDRAWN

BRETT KENNEDY, CASE NO. 01-0716
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FELIX LEON, CASE NO. 01-2861
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MICHAEL PEREZ, CASE NO. 01-3082
Classification: Correctional Officer
Department of Corrections

ACTION: DENIED

JEFF PRUDHEL, CASE NO. 01-3082
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NINA PRYOR, CASE NO. 01-3074
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RYAN PURKEY, CASE NO. 01-3160
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

DEANA RANDLE, CASE NO. 01-3157
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JERIEL SALINAS, CASE NO. 01-3035
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JASON WALLE, CASE NO. 01-2662
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JON WELDON, CASE NO. 01-3050
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DON YOUNG, CASE NO. 01-0844
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

HE ZHANG, CASE NO. 01-3045
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

13. MEDICAL APPEALS

On December 4, 2001, Board adopted the following decision presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

ORLANDO PINEMTEL, CASE NO. 01-3356

Classification: Correctional Officer

Department of Corrections

ACTION: DISMISSED

14. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

A. PROGRAM SPECIALIST III, FRANCHISE TAX BOARD (FTB)
ADMINISTRATOR II, FTB

The Franchise Tax Board (FTB) proposes to revise the specification for the class of Program Specialist III, FTB in order to broaden the candidate group to allow Administrator II, FTB incumbents to meet the minimum qualifications to compete in the exam process.

ACTION: Noted

15. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY
UNDER CONSIDERATION

(1) DEPUTY DIRECTOR, LEGISLATIVE AND PUBLIC AFFAIRS

The Department of Alcohol and Drug Programs proposes to allocate the above position to the CEA category. The incumbent is responsible for the effective management, planning direction and oversight of the activities related to legislation and public affairs. The department indicates that the position is at the second organizational level and reports to the Chief Deputy Director.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. GERARDO Z. HERNANDEZ, CASE NO. 01-0220. Appeal from 15 working days suspension. Department of California Highway Patrol. (Oral argument held October 2, 2001).

NO ACTION

2. STELLA OYEKA, CASE NO. 00-1045. Appeal from rejection during probation. Franchise Tax Board. (Written testimony presented November 6, 2001).

NO ACTION

3. MARK CHAMBERLAIN, CASE NO. 01-0740B. Appeal from backpay. Department of Mental Health. (Oral argument held November 6, 2001).

NO ACTION

4. SUSAN BERGER-TULLY, CASE NO. 01-0489P. Appeal from rejection during probation. (Oral argument held November 6, 2001).

NO ACTION

5. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CDF)

Appeal of the CDF from the Executive Officer's June 6, 2001 disapproval of CDF's 25 personal services contracts (contracts) with various medical providers in response to the request for review submitted by the California State Employees Association (CSEA). (Hearing held November 6, 2001).

NO ACTION

6. CATO HALL, CASE NO. 00-1147P. Appeal from dismissal. Department of Corrections. (Oral argument held November 6, 2001).

NO ACTION

7. DOUGLAS FORS, CASE NO. 00-3180. Appeal from 6 working days or more suspension. Department of Transportation. (Oral argument held November 6, 2001).

NO ACTION

8. GLENN FLEMING, CASE NO. 00-3709. Appeal from 6 working days or more suspension. Office of Emergency Services. (Oral argument held November 6, 2001).

NO ACTION

9. CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS (CAPS) CAPS requests that individuals meet the minimum education requirements prior to transferring into Bargaining Unit 10 classifications. (Hearing held November 6, 2001).

NO ACTION

10. JUDITH BECK, CASE NO. 00-3025. Appeal from constructive medical termination. Department of California Highway Patrol. (Oral argument held November 7, 2001).

NO ACTION

11. TENILLE HABERMAN, CASE NO. 00-3990. Appeal from rejection during probation. Department of Corrections. (Oral argument held November 7, 2001).

NO ACTION

12. DAMON MORRIS, CASE NO. 00-3542. Appeal from dismissal. Department of the Youth Authority. (Oral argument held November 7, 2001).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on December 4, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.